IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of Case

W.P. No. 1333 (S/S) of 2006

Date of decision :- 19-10-2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 19-10-2006 Initials of Judge

Note :-Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 1333 (S/S) of 2006

Subhash Ram
S/o Shyam Lal
District – Champawat .....Petitioner

Versus

1. State of Uttaranchal
   through Secretary Energy, Uttaranchal Shashan,
   District -Dehradun

2. Uttaranchal Renewable Energy Development Authority
   Urja Park Parisar, Industrial Area,
   Patelnagar,
   District – Dehradun
   Through its Director ..... Respondents

Mr. Sharad Sharma, learned counsel for the petitioner.
Sri N.P. Sah, learned standing counsel for the respondent No. 1/State.
Sri V.B.S. Negi learned standing counsel for respondent No.2.

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs: -

> "i) To issue a writ order or direction in the nature of certiorari quashing the part of the impugned order dated 19.09.2006 and the order dated 29.09.2006 passed by respondent No.2 annexed as Annexure Nos. 7 & 10 to the writ petition.
>
> ii) To issue any writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.
>
> iii) To award the cost of the petition."

2. The petitioner is a Junior Engineer appointed with the respondent No. 2. The petitioner was given charge of the Project Incharge in pursuance of the order dated 27.06.2003 and he continued as Incharge of the project at Champawat till the impugned order dated 19.09.2006 (annexure-7 to the

writ petition). The petitioner has given his revised option for the State of Uttaranchal and even then he was relieved for the State of U.P. vide order dated 19.09.2006. The petitioner had given option for the State of Uttaranchal and he had been asked to be continued in the State of Uttaranchal provided he accepts the seniority at the bottom of all the Junior Engineers posted in the State. Meanwhile, on 19.09.2006, the respondent No.2 issued direction to the petitioner to hand over the charge and he was relieved to the State of U.P. The petitioner has preferred the writ petition before this court and an interim order was passed by the court wherein the petitioner was permitted to continue to work within the State of Uttaranchal. Thereafter, interim order was served upon the respondents wherein it has been directed by the respondent that the petitioner would not be relieved from the State of Uttaranchal to the State of U.P. However, the rest part of the order dated 19.09.2006 was allowed to continue. Feeling aggrieved by the said order, annexure 7 and 10 to the writ petition, the petitioner has preferred this writ petition before this court.

3. I have heard Sri Sharad Sharma, learned counsel for the petitioner; Sri N.P. Sah, learned standing counsel for the respondent No.1; Sri V.B.S. Negi, learned counsel for the respondent No. 3 and perused the record.

4. It was contended on behalf of the learned counsel for the petitioner that the impugned orders were passed when the respondents received interim order passed by this court. The respondents had an institutional bias against the petitioner, as such, arbitrarily order was passed by the respondents. Learned counsel for the respondents refuted

the contention and contended that the writ petition was filed only on 19.09.2006 and the interim order was passed on 20th September, 2006. The impugned order annexure-7 by which the petitioner was relieved to the State of U.P. as well as to hand over charge of the project Officer was passed prior to the passing of the interim order. There is no institutional bias in the matter. Perusal of the record clearly reveals that the order dated 19.09.2006 was passed prior to the passing of the impugned order by this court. There were two parts of the order. The first part deals with the relieving of the petitioner to the State of U.P. and the second part deals with the handing over the charge to the other persons. Thus the orders were passed prior to the passing of the interim order. Annexure-10 dated 29th September, 2006 was passed in accordance with the direction of the Court not to relieve the petitioner from the State of Uttaranchal. It was further pointed out that the charge of the petitioner could have been restored by the respondents. The respondents are well within their competence either to keep the petitioner without any work or to post him any other projects or to give him the charge for which he was having. The suitability for being posted or not being posted is within the competence of the respondents. It is for the executive authorities to decide with regard to the posting of the petitioner. This court while exercising the jurisdiction under Article 226 of the Constitution of India, does not act as an appellate authority. This court has to see whether the order has been passed in accordance with the rules or the order has been passed against malafide intention by the respondents without any competence. There is no reason to interfere with the order passed by the respondents because there is no malafide in

the impugned order. The orders were passed by the respondents within their competence.

5. It was further pointed out that the District Magistrate and the Chief Development Officer had already recommended the case of the petitioner to be continued as Project Incharge in the said Project. The respondents should have considered the recommendation of the District Magistrate and the Development Officer. The learned standing counsel refuted the contention and contended that it is for the competent authority to assess and to pass the suitable order. The respondent No. 2 after considering all the relevant factors had considered to continue the order dated 19th September, 2006. As I have already pointed out this court while exercising the power of judicial review under Article 226 of the Constitution of India, does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct the errors of law or procedural error or violation of principles of natural justice. The judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that individual receives fair treatment and not to correct the errors. The court may interfere where authority has violated the statutory rules in a manner inconsistent with the principles of natural justice. Keeping in view the above circumstances of the case, the arguments of the learned counsel for the petitioner has no force.

6. In view of the foregoing discussion, this writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. The parties shall bear their own costs.

7. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S.Rawat, J.)

19th October, 2006
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